

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LINDA JOHNSTONE and L.D. by and through
her mother, LINDA JOHNSTONE, individually
and on behalf of a class of all persons and
entities similarly situated,

Plaintiffs

vs.

CROSSCOUNTRY MORTGAGE, LLC

Defendant.

CASE NO. 1:22-cv-01111-BMB

JUDGE: BRIDGET MEEHAN BRENNAN

CONSENT MOTION TO EXTEND EXPERT DISCOVERY DEADLINE

Plaintiffs, Linda Johnstone and L.D. (collectively, “Plaintiffs”) and Defendant, CrossCountry Mortgage, LLC (“CCM”), by and through their undersigned counsel, respectfully request that this Court extend the expert discovery deadline set forth in its Case Management Order dated October 26, 2023 (the “Order”) by thirty (30) days. In support of this consent motion, Plaintiffs and CCM state as follows:

1. On October 26, 2023, this Court entered the Order.
2. In the Order, this Court imposed a number of deadlines, including deadlines for the completion of class discovery, the production of expert reports, and the completion of expert discovery.
3. The Order set a deadline of January 5, 2024 for the production of expert reports for the party bearing the burden of proof, December 22, 2024 for the completion of class discovery, a deadline of February 2, 2024 for responsive expert reports, and a deadline of March 5, 2024 for

the completion of expert discovery.

4. On December 22, 2023, Plaintiffs filed a Motion for Leave to File Second Amended Complaint (the “Motion for Leave to Amend”). *See* Dkt. No. 44.

5. In the Motion for Leave to Amend, Plaintiffs sought to file a Second Amended Complaint to add a new cause of action that CCM is liable for damages pursuant to 47 U.S.C. §227(c)(5) because it made “two or more telemarketing calls within a 12-month period to Plaintiffs and the members of the National Do Not Call Registry Class while those persons’ phone numbers were registered on the National Do Not Call Registry.” *Id.* at ¶¶ 31, 77-79.¹

6. Attached as an exhibit to the Motion for Leave to Amend was a Declaration of Expert Aaron Woolfson (the “Declaration”) that opines on a cause of action – a violation of the do not call provisions (“DNC”) of the Telephone Consumer Protection Act (“TCPA”) – that is not at issue in this proceeding. *Id.* at Ex. A.

7. On January 4, 2024, this Court granted Plaintiff’s consent motion and issued an order extending only the class discovery cut-off until January 21, 2024.

8. On January 30, 2024, Plaintiffs served a Supplemental Expert Declaration of Aaron Woolfson (the “Supplemental Declaration”).

9. In the Supplemental Declaration, Aaron Woolfson (“Woolfson”) included two “waterfall analyses,” one of which (“Waterfall Analysis 2”) pertains to the currently at-issue pre-recorded call claim.

10. CCM’s counsel contacted Plaintiffs’ counsel to object to the Supplemental Declaration on the grounds that it was untimely because it was produced after the January 5, 2024 deadline and to request an extension of the expert discovery cut-off.

¹ As of the date of this submission, the Motion for Leave to Amend remains pending before this Court.

11. Plaintiffs' counsel stated that Plaintiffs disagree with CCM's position and that their position is that the Supplemental Declaration is based on information CCM produced on January 16, 2024. CCM disagrees.

12. Nevertheless, in an attempt to reach an amicable resolution to this dispute that does not involve motion practice surrounding the timeliness (and consequent admissibility) of the Supplemental Declaration, Plaintiffs and CCM hereby submit the instant consent motion and respectfully request that this Court extend the deadline to complete expert discovery by thirty (30) days from March 5, 2024 until April 4, 2024.

13. Plaintiffs and CCM respectfully submit that good cause exists to grant this consent motion because it will provide the parties additional needed time to complete expert discovery on the at-issue claims and will conserve this Court's resources by avoiding additional motion practice.

14. If this Court grants the instant consent motion, CCM will not object at a future date that Plaintiffs' service of the Supplemental Declaration *as it pertains only to the* "Waterfall Analysis 2" contained therein after January 5, 2024 was untimely or harmful with respect to its tardiness in accordance with Federal Rule of Civil Procedure 37(c)(1).²

15. With that said, if this Court denies the instant consent motion, CCM reserves the right to take all steps necessary to challenge the timeliness and efficacy of the Supplemental Declaration including the Waterfall II analysis. These steps may include the filing of a motion to strike the Supplemental Declaration.

WHEREFORE, Plaintiffs and CCM respectfully request that this Court grant the instant

² For sake of clarity, CCM reserves all objections it may make as to the original Declaration and the Waterfall Analysis I in the Supplemental Declaration, including as it pertains to leave to conduct discovery on any new cause of action this Court may allow via amendment, admissibility, and reliability. CCM reserves the same objections as to the Supplemental Declaration with the exception of an objection to timeliness of the Waterfall II analysis.

motion and extend the expert discovery deadline set forth in the Order by thirty (30) days.

A Proposed Order is attached for the Court's convenience.

Dated: March 5, 2024

Respectfully submitted,

/s/ Jonathan P. Misny

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